

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 332 OF 2009

Reserved on: 31-08-2010

Date of pronouncement :15-09-2010

M/s Kessels Engineering Works Pvt. Ltd. & Anr.

.....Petitioner

Through : Ms. Geeta Vohra, Advocate

Versus

The Registrar of Companies

.....Respondent

Through : Mr. V.K.Gupta, Dy. Registrar for
Registrar of Companies.

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under S.560(6) of the Companies Act, 1956, seeking restoration of the name of the petitioner company to the Register of Companies maintained by the Registrar of Companies. M/s Kessels Engineering Works Pvt. Ltd. was incorporated under the Companies Act, 1956 on 18th June, 1987 vide Certificate of Incorporation No.28366 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. Petitioner No.1 herein is the erstwhile company, i.e. Kessels Engineering Works Pvt. Ltd, and petitioner No.2 is Shri Barat Bhushan Sawhney, a Director in petitioner No.1.

3. The Registrar of Companies, i.e the respondent herein, struck the company's name off the Register due to defaults in statutory compliances, namely, failure to file annual returns and balance sheets in respect of the years 2001 - 2009. Consequently, the respondent initiated proceedings under S.560 of the Companies Act, 1956, for the purpose of striking the name of petitioner No.1 off the Register maintained by him. It is stated by counsel for the respondent that the procedure prescribed under S.560 of the Companies Act, 1956 was followed, notices as required under S.560(1), S.560(2), S.560(3) and, ultimately, under S.560(5) were issued, and that the name of petitioner No.1 was published in the Official Gazette on 23rd June, 2007 at S.No. 6074.

4. It is stated by the counsel for the petitioners that the petitioners did not receive any show cause notice, nor were they afforded any opportunity of being heard before the aforesaid action was taken by the respondent. On examination, it appears that the address of the registered office of petitioner No.1 is the same as its address in the records of the respondent. Therefore, the petitioners are deemed to have been duly served with the notices issued by the respondent before striking petitioner No.1's name off the Register.

5. The petitioners submit that the company has been active since incorporation, and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 1956. In

support of this statement, copies of the audited accounts and acknowledgments of income tax returns for the financial years 2004 - 2008, have been annexed to this petition.

6. It is the case of the petitioners that the accounts of the company were prepared and audited every year, and that the company had engaged the services of a Chartered Accountant firm to perform the task of filing the statutory documents with the office of the respondent. It is submitted that the aforesaid Chartered Accountant firm did not carry out the task it was entrusted with. However, no details regarding the Chartered Accountant firm in question have been given in the petition. It is further submitted that it was only in June 2009 that the fact of non-filing of the returns and other documents with the respondent, as well as the fact that the company's name had been struck off the Register, was known to the petitioners.

7. Counsel for the respondent does not have any objection to the revival of the company, subject to the petitioners filing all outstanding statutory documents, i.e. annual returns and balance sheets in respect of the years 2001 - 2009, along with the filing and additional fee, as applicable on the date of actual filing.

8. In **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies**, [1986] 60 Comp Cas 154 (Bom), the Bombay High Court, in paragraph 20 thereof, has held, inter alia, that;

"The object of section 560(6) of the Companies Act is to give a chance to the company, its members and

creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice."

9. Looking to the fact that the company is a running company with an annual turnover of approximately Rs.21 crores, as on 31st March, 2008; that the petitioners have filed this petition within the stipulated limitation period, i.e. within 20 years from the date of publication of the notice in the Official Gazette; and to the decision of the Bombay High Court in **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies (supra)**, this petition deserves to be allowed. However, a greater degree of care was certainly required from the company in ensuring statutory compliances. The petitioners have given no details of the administrative arrangements put in place to ensure that statutory compliances are met well within time, save for a bald statement that this responsibility was that of a hired and nameless Chartered Accountant firm. If any employee, whether part-time or full-time, defaults in his duties, the primary responsibility for ensuring statutory compliances remains that of the management.

10. I might notice that Rule 94 of the Companies (Court) Rules, 1959 states, inter alia, as follows;

'Unless for any special reasons that the Court shall otherwise order, the order shall direct that the petitioners do pay to the Registrar of Companies his costs of, and occasioned by, the petition.'

To my mind, the expression 'shall otherwise order' used in Rule 94, as reproduced above, means that although, ordinarily, the costs of the Registrar of Companies must be paid by the petitioner, however, if the Court considers it necessary to do so, it may give other orders in this behalf also. From this it follows that it is open to the Court to issue specific orders departing from the norm by imposing lower or no costs at all, or even levying further additional costs, depending on the circumstances.

11. The facts and circumstances of this case show that this is not a case where the interests of justice and requirements of the statute would be met merely by the payment of costs of the Registrar of Companies. It is difficult to believe that although the company was functioning for the last ten years, with an admittedly high turnover, the management was so preoccupied with other matters that they were unable to ensure whether statutory documents were being filed with the respondent. The whole matter has obviously been handled in a very casual manner and must be deprecated. To my mind, such conduct does not display sound and responsible business functioning expected of companies. The non-availability of the returns and balance sheets with the respondent for all these years had also made it impossible for any interested party to find out about the financial health of the company over a span of the last ten years. Earlier decisions on the same lines are **M/s Santaclaus Toys Pvt. Ltd v Registrar of Companies**, CP. No.271/2009, decided on 16th February, 2010; **M/s Medtech Pharma India Pvt Ltd v Registrar of Companies**, CP.No.241/2009, decided on 19th April, 2010;

Rajinder Bawa, Director, Baver Suspension (P) Ltd v Registrar of Companies, CP No. 406 of 2008, decided on 27th April, 2010; and **M/s Model Machinery Co. (P.) Ltd. v Registrar of Companies**, CP. No. 170/2009, decided on 4th June, 2010.

12. For all these reasons, the restoration of the company's name to the Register maintained by the respondent will be subject to the payment of ₹ 75,000 as exemplary costs, payable to the common pool fund of the Official Liquidator. In addition, further costs of ₹ 25,000 be paid to the Registrar of Companies. Costs be paid within three weeks from today. The restoration of the petitioner company's name to the Register will be subject to the petitioner filing all outstanding documents required by law and completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late filing of statutory returns. The name of the company, its directors and members shall then, as a consequence, stand restored to the Register maintained by the respondent, as if the name of the company had not been struck off, in accordance with S.560(6) of the Companies Act, 1956.

13. Liberty is granted to the respondent to proceed with penal action against the company, if so advised, on account of the company's alleged default in compliance with S.162 of the Companies Act, 1956.

14. The petition is disposed of in the above terms.

SUDERSHAN KUMAR MISRA, J.

SEPTEMBER 15, 2010